



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Senators PEARCE, BAIR, Stennett and,
Representatives RAYBOULD, Eskridge, Smith

FROM: Katharine Gerrity - Principal Legislative Research Analyst

DATE: May 30, 2014

SUBJECT: Temporary Rule

IDAPA 58.01.02 - Water Quality Standards - Docket No. 58-0102-1301

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. Please call with any questions - 334-4834. Thank you.

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1301

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY AND PENDING RULE

EFFECTIVE DATE: The temporary rule is effective June 4, 2014 and remains in effect until the adjournment of the 2015 legislative session unless rescinded by the agency. This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-third Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Sections 67-5226 and 67-5224, Idaho Code, notice is hereby given that the Board has adopted a temporary and pending rule. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code. Section 39-3603(2)(c), Idaho Code, has been revised by the 2014 Idaho Legislature (House Bill 392). This legislation is consistent with the language in the pending rule.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, December 4, 2013, [Vol. 13-12, pages 119 through 128](#). After consideration of public comments, the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov/58-0102-1301 or by contacting the undersigned.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in federal programs and, therefore, avoid federal promulgation of Idaho's water quality standards.

IDAHO CODE SECTION 39-107D STATEMENT: The standards included in this rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

Dated this 9th day of May, 2014.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

DOCKET NO. 58-0102-1301 - ADOPTION OF PENDING AND TEMPORARY RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin,
[Volume 13-12, December 4, 2013, pages 119 through 128](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and final approval by the 2015 Idaho State Legislature.

Additionally, this rule has been adopted as a temporary rule and is effective June 4, 2014.

Pursuant to Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin.

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 58-0102-1301
(Only those Sections being amended are shown.)**

052. ANTIDegradation Implementation.

The antidegradation policy shall be implemented as follows: (3-18-11)

01. Waters Protected. All waters receive Tier I protection. Waters receiving Tier II protection will be identified using a water body by water body approach during the antidegradation review. Waters given Tier III protection are designated in law. (3-18-11)

02. Restoration Projects. Changes in water quality may be allowed by the Department without an antidegradation review where determined necessary to secure long-term water quality improvement through restoration projects designed to trend toward natural characteristics and associated uses to a water body where those characteristics and uses have been lost or diminished. Restoration projects shall implement best management practices. (3-18-11)

03. General Permits. For general permits issued on or after July 1, 2011, the Department will conduct an antidegradation review, including any required Tier II analysis, at the time at which general permits are certified. For general permits that the Department determines adequately address antidegradation, review of individual applications for coverage will not be required unless it is required by the general permit. For general permits that the Department determines do not adequately address antidegradation, the Department may conclude that other conditions, such as the submittal of additional information or individual certification at the time an application is submitted for coverage under a general permit, may be necessary in the general permit to provide reasonable assurance of compliance with the antidegradation policy. If supported by the permit record, the Department may also presume that discharges authorized under a general permit are insignificant or that the pollution controls required in the general permit are the least degrading alternative as specified in Subsection 052.08.c. (3-29-12)

04. Initiation of Antidegradation Review. Review of degradation potential and application of the appropriate level of protection from degradation will be triggered by an application for a new or reissued permit or license. (3-18-11)

05. Identification of Tier II Waters. The Department will utilize a water body by water body approach in determining where Tier II protection is appropriate in addition to Tier I protection. This approach shall be based on an assessment of the chemical, physical, biological and other information regarding the water body. The most recent federally approved Integrated Report and supporting data will be used to determine the appropriate level of protection as follows: (3-29-12)

a. Water bodies identified in the Integrated Report as fully supporting assessed uses will be provided Tier II protection. (3-29-12)

b. Water bodies identified in the Integrated Report as not assessed will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license. (3-29-12)

c. Water bodies identified in the Integrated Report as not fully supporting assessed uses will receive Tier I protection for the impaired aquatic life or recreational use, except as follows: (3-29-12)

i. For aquatic life uses identified as impaired for dissolved oxygen, pH or temperature, if biological or aquatic habitat parameters show a healthy, balanced biological community is present, as described in the "Water Body Assessment Guidance" published by the Idaho Department of Environmental Quality, then the water body shall receive Tier II protection for aquatic life uses. (3-29-12)

ii. For recreational uses, if water quality data show compliance with those levels of water quality criteria listed in Sections 200, 210, 251, and 275 (where applicable), then the water body shall receive Tier II protection for recreational uses. (3-29-12)

06. Evaluation of Effect of an Activity or Discharge on Water Quality. The Department will evaluate the effect on water quality for each pollutant. The Department will determine whether an activity or discharge results in an improvement, no change, or degradation of water quality. (3-18-11)

a. Effect on water quality will be based on the calculated change in concentration in the receiving water as a result of a new or reissued permit or license. With respect to a discharge, this calculation will take into account dilution using appropriate mixing of the receiving water under critical conditions coupled with the design flow of the discharge. For a reissued permit or license, the calculated change will be the difference in water quality that would result from the activity or discharge as authorized in the current permit or license and the water quality that would result from the activity or discharge as proposed in the reissued permit or license. For a new permit or license, the calculated change will be the difference between the existing receiving water quality and water quality that would result from the activity or discharge as proposed in the new permit or license. (3-18-11)

i. Current Discharge Quality. For pollutants that are currently limited, current discharge quality shall be based on limits in the current permit or license. For pollutants not currently limited, current discharge quality shall be based on available discharge quality data collected within five years of the application for a permit or license or other relevant information. (3-18-11)

ii. Proposed Quality for an Existing Discharge. Future discharge quality shall be based on proposed permit limits. For pollutants not limited in the proposed permit or license, future discharge quality will be estimated from available discharge quality data since the last permit or license was issued accounting for any changes in production, treatment or operation. For the proposed discharge of a new pollutant or a proposed increased discharge of a pollutant, future discharge quality will be estimated based on information provided by the applicant or other relevant information. (3-18-11)

iii. New Permit Limits for an Existing Discharge. When new permit limits are proposed for the first time for a pollutant in an existing discharge, then for purposes of calculating the change in water quality, any statistical procedures used to derive the proposed new limits will be applied to past discharge quality as well, where appropriate. (3-18-11)

iv. Proposed Quality for a New Discharge. Future discharge quality shall be based on proposed permit limits. For pollutants not limited in the proposed permit or license, future discharge quality will be based on information provided by the applicant or other relevant information. (3-18-11)

b. Receiving water quality will be the quality measured, or modeled as appropriate, immediately above the discharge for flowing waters and outside any Department authorized mixing zone for lakes and reservoirs. (3-18-11)

c. Offsets. In determining the effect of an activity or discharge on water quality of Tier II or Tier III waters, the Department may take into account reductions in pollution from other sources that are tied to the proposed activity or discharge. These offsets in pollution must be upstream of the degradation in water quality due to the proposed activity or discharge and occur before the activity or discharge is allowed to begin. The applicant seeking a permit or license for an activity or discharge based on offsets will be held responsible for assuring offsets are achieved and maintained as a condition of their permit or license. (3-18-11)

07. Tier I Review. Tier I review will be performed for all new or reissued permits or licenses. Existing uses and the water quality necessary to protect the existing uses must always be maintained and protected. No degradation or lowering of water quality may be allowed that would cause or contribute to violation of water quality criteria as calculated after authorized mixing of the discharge with the receiving water. Identification of existing uses and the water quality necessary for their protection will be based on all available information, including any water quality related data and information submitted during the public comment period for the permit or license. (3-18-11)

08. Tier II Analysis. A Tier II analysis will only be conducted for activities or discharges, subject to a permit or a license, that cause degradation. The Department may allow significant degradation of surface water quality that is better than assigned criteria only if it is determined to be necessary to accommodate important economic or social development in the area in which the waters are located. The process and standard for this determination are set forth below. (3-18-11)

a. Insignificant ~~Activity or Discharge~~ Degradation. ~~If the Department shall consider the size and character of~~ determines an activity or discharge ~~or the magnitude of its effect on the receiving stream and will cause degradation, then the Department~~ shall determine whether ~~# the degradation~~ is insignificant. ~~If an activity or discharge is determined to be insignificant, then no further Tier II analysis for other source controls (Subsection 052.08.b.), alternatives analysis (Subsection 052.08.c.) or socioeconomic justification (Subsection 052.08.d.) is required.~~ (3-29-12)(6-4-14)T

i. ~~The Department shall determine insignificance when the proposed change in an activity or discharge, from conditions as of July 1, 2011, will not cumulatively decrease assimilative capacity by more than ten percent (10%). A cumulative decrease in assimilative capacity of more than ten percent (10%), from conditions as of July 1, 2011, shall constitute significant degradation. If the cumulative decrease in assimilative capacity from conditions as of July 1, 2011, is equal to or less than ten percent (10%), then, taking into consideration the size and character of the activity or discharge and the magnitude of its effect on the receiving stream, the Department may determine that the degradation is insignificant.~~ (3-29-12)(6-4-14)T

ii. The Department may request additional information from the applicant ~~in making a determination whether a proposed change in an activity or discharge is insignificant~~ as needed to determine the significance of the degradation. (3-29-12)(6-4-14)T

iii. If degradation is determined to be insignificant, then no further Tier II analysis for other source controls (Subsection 052.08.b.), alternatives analysis (Subsection 052.08.c.), or socioeconomic justification (Subsection 052.08.d.) is required. (6-4-14)T

b. Other Source Controls. In allowing any degradation of high water quality, the Department must assure that there shall be achieved in the watershed the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for all nonpoint source controls. In providing such assurance, the Department may enter together into an agreement with other State of Idaho or federal agencies in accordance with Sections 67-2326 through 67-2333, Idaho Code. (3-18-11)

c. Alternatives Analysis. Degradation will be deemed necessary only if there are no reasonable alternatives to discharging at the levels proposed. The applicant seeking authorization to degrade high water quality must provide an analysis of alternatives aimed at selecting the best combination of site, structural, managerial and treatment approaches that can be reasonably implemented to avoid or minimize the degradation of water quality. To identify the least degrading alternative that is reasonable, the following principles shall be followed: (3-18-11)

i. Controls to avoid or minimize degradation should be considered at the earliest possible stage of project design. (3-18-11)

ii. Alternatives that must be evaluated as appropriate, are: (3-18-11)

(1) Relocation or configuration of outfall or diffuser; (3-18-11)

(2) Process changes/improved efficiency that reduces pollutant discharge; (3-18-11)

- (3) Seasonal discharge to avoid critical time periods for water quality; (3-18-11)
- (4) Non-discharge alternatives such as land application; and (3-18-11)
- (5) Offsets to the activity or discharge's effect on water quality. (3-18-11)
- iii. The Department retains the discretion to require the applicant to examine specific alternatives or provide additional information to conduct the analysis. (3-18-11)
- iv. In selecting the preferred alternative the applicant shall: (3-18-11)
 - (1) Evaluate economic impacts (total cost effectiveness, incremental cost effectiveness) of all technologically feasible alternatives; (3-18-11)
 - (2) Rank all technologically feasible treatment alternatives by their cost effectiveness at pollutant reduction; (3-18-11)
 - (3) Consider the environmental costs and benefits across media and between pollutants; and (3-18-11)
 - (4) Select the least degrading option or show that a more degrading alternative is justified based on Subsections 052.08.c.iv.(1), 052.08.c.iv.(2), or 052.08.c.iv.(3) above. (3-29-12)
- d. Socioeconomic Justification. Degradation of water quality deemed necessary must also be determined by the Department to accommodate important economic or social development. Therefore, the applicant seeking authorization to degrade water quality must at a minimum identify the important economic or social development for which lowering water quality is necessary and should use the following steps to demonstrate this: (3-18-11)
 - i. Identify the affected community; (3-18-11)
 - ii. Describe the important social or economic development associated with the activity which can include cleanup/restoration of a closed facility; (3-18-11)
 - iii. Identify the relevant social, economic and environmental health benefits and costs associated with the proposed degradation in water quality for the preferred alternative. Benefits and costs that must be analyzed include, but are not limited to: (3-18-11)
 - (1) Economic benefits to the community such as changes in employment, household incomes and tax base; (3-18-11)
 - (2) Provision of necessary services to the community; (3-18-11)
 - (3) Potential health impacts related to the proposed activity; (3-18-11)
 - (4) Impacts to direct and indirect uses associated with high quality water, e.g., fishing, recreation, and tourism; and (3-18-11)
 - (5) Retention of assimilative capacity for future activities or discharges. (3-18-11)
 - iv. Factors identified in the socioeconomic justification should be quantified whenever possible but for those factors that cannot be quantified a qualitative description of the impacts may be accepted; and (3-18-11)
 - v. If the Department determines that more information is required, then the Department may require the applicant to provide further information or seek additional sources of information. (3-18-11)
- e. Process. (3-18-11)

i. Analysis. The Department in cooperation with State of Idaho designated management agencies and/or federal agencies will collect information regarding the other source controls specified in Subsection 052.08.b. The applicant for a new or reissued permit or license is responsible for providing information pertinent to determining significance/insignificance of proposed changes in water quality and completing an alternatives analysis and socioeconomic justification as appropriate and submitting them to the Department for review. (3-29-12)

ii. Departmental review. The Department shall review all pertinent information and, after intergovernmental coordination, public notice and input, make a determination as to whether there is assurance that the other source controls specified in Subsection 052.08.b. shall be achieved, and whether degradation of water quality is necessary to accommodate important economic or social development. (3-29-12)

iii. Public Involvement. The Department will satisfy the public participation provisions of Idaho's continuing planning process. Public notice and review of antidegradation will be coordinated with existing 401 certification notices for public review. (3-18-11)

09. Tier III - Outstanding Resource Waters (ORWs). ORWs are designated by the legislature. Subsection 052.09 describes the nomination, public notice and comment, public hearing, and board review process for directing the Department to develop legislation designating ORWs. Only the legislature may designate ORWs. Once designated by the legislature, the ORWs are listed in these rules. (3-18-11)

a. Nominations. Any person may request, in writing to the board, that a stream segment be considered for designation as an Outstanding Resource Water. To be considered for ORW designation, nominations must be received by the board by April 1 or ten (10) days after the adjournment sine die of that year's regular session of the legislature, whichever is later, for consideration during the next regular session of the legislature. All nominations shall be addressed to:

Idaho Board of Environmental Quality
Department of Environmental Quality
Outstanding Resource Water Nomination
1410 N. Hilton
Boise, Idaho 83706-1255

The nomination shall include the following information: (3-18-11)

- i. The name, description and location of the stream segment; (3-18-11)
- ii. The boundaries upstream and downstream of the stream segment; (3-18-11)
- iii. An explanation of what makes the segment a candidate for the designation; (3-18-11)
- iv. A description of the existing water quality and any technical data upon which the description is based as can be found in the most current basin status reports; (3-18-11)
- v. A discussion of the types of nonpoint source activities currently being conducted that may lower water quality, together with those activities that are anticipated during the next two (2) years, as described in the most current basin status reports; and (3-18-11)
- vi. Any additional evidence to substantiate such a designation. (3-18-11)

b. Public Notice and Public Comment. The board will give public notice that one (1) or more stream segments are being considered for recommendation to the legislature as outstanding resource waters. Public notice will also be given if a public hearing is being held. Public comments regarding possible designation will be accepted by the board for a period of at least forty-five (45) days. Public comments may include, but are not limited to, discussion of socioeconomic considerations; fish, wildlife or recreational values; and other beneficial uses. (3-18-11)

c. Public Hearing. A public hearing(s) may be held at the board's discretion on any stream segment

nominated for ORW designation. Public notice will be given if a hearing is held. The decision to hold a hearing may be based on the following criteria: (3-18-11)

- i. One (1) or more requests contain supporting documentation and valid reasons for designation; (3-18-11)
- ii. A stream segment is generally recognized as constituting an outstanding national resource, such as waters of national and state parks, and wildlife refuges; (3-18-11)
- iii. A stream segment is generally recognized as waters of exceptional recreational or ecological significance; (3-18-11)
- iv. The board shall give special consideration to holding a hearing and to recommending for designation by the legislature, waters which meet criteria found in Subsections 052.09.c.ii. and 052.09.c.iii.; (3-29-12)
- v. Requests for a hearing will be given due consideration by the board. Public hearings may be held at the board's discretion. (3-18-11)

d. Board Review. The board shall review the stream segments nominated for ORW designation and based on the hearing or other written record, determine the segments to recommend as ORWs to the legislature. The board shall submit a report for each stream segment it recommends for ORW designation. The report shall contain the information specified in Subsection 052.09.a. and information from the hearing record or other written record concerning the impacts the designation would have on socioeconomic conditions; fish, wildlife and recreational values; and other beneficial uses. The Department shall then prepare legislation for each segment that will be recommended to the legislature as an ORW. The legislation shall provide for the listing of designated segments in these rules without the need for formal rulemaking procedures, pursuant to Sections 67-5201, et seq., Idaho Code. (3-29-12)

e. Designated Waters. Those stream segments designated by the legislature as ORWs are listed in Sections 110 through 160. (3-18-11)

f. Restriction of Nonpoint Source Activities on ORWs. Nonpoint source activities on ORWs shall be restricted as follows: (3-18-11)

i. The water quality of ORWs shall be maintained and protected. After the legislature has designated a stream segment as an outstanding resource water, no person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of that ORW, except for conducting short term or temporary nonpoint source activities which do not alter the essential character or special uses of a segment, allocation of water rights, or operation of water diversions or impoundments. Stream segments not designated as ORWs that discharge directly into an ORW shall not be subject to the same restrictions as an ORW, nor shall the ORW mixing zone be subject to the same restrictions as an ORW. A person may conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of a tributary or stream segment, which discharges directly into an ORW or an ORW mixing zone, provided that the water quality of that ORW below the mixing zone shall not be lowered. (3-18-11)

ii. After the legislature has designated a stream segment as an outstanding resource water as outlined in Subsection 052.09.e., existing nonpoint source activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an ORW. The provisions of this section shall not affect short term or temporary activities that do not alter the essential character or special uses of a segment, allocation of water rights, or operations of water diversions or impoundments, provided that such activities shall be conducted in conformance with applicable laws and regulations. (3-29-12)

g. Restriction of Point Source Discharges to ORWs. The water quality of ORWs shall be maintained and protected. Point source discharges that may cause degradation to ORWs may be allowed only if they are offset by reductions in other discharges per Subsection 052.06.c. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

055. WATER QUALITY LIMITED WATERS AND TMDLS.

01. ~~After Determining That~~ **Reporting** Water Body ~~Does Not Support~~ Use **Support Status**. ~~After determining that a water body does not fully support designated or existing beneficial uses in accordance with Section 054, the Department, in consultation with the applicable basin and watershed advisory groups, shall evaluate whether the application of required pollution controls to sources of pollution affecting the impaired water body would restore the water body to full support status. This evaluation may include the following:~~ **After using the provisions in Section 054, and after consultation with the appropriate basin and watershed advisory groups, the Department shall identify water bodies in the appropriate category in the Integrated Report. The Integrated Report shall be published periodically by the Department in accordance with the applicable provisions of the Clean Water Act and shall be subject to public review and comment prior to submission to EPA for approval.** (3-18-11)(6-4-14)T

~~a- Identification of significant sources of pollution affecting the water body by past and present activities;~~ (3-20-97)

~~b- Determination of whether the application of required or cost effective interim pollution control strategies to the identified sources of pollution would restore the water body to full support status within a reasonable period of time;~~ (3-20-97)

~~c- Consultation with appropriate basin and watershed advisory groups, designated agencies and landowners to determine the feasibility of, and assurance that required or cost effective interim pollution control strategies can be effectively applied to the sources of pollution to achieve full support status within a reasonable period of time;~~ (3-20-97)

~~d- If pollution control strategies are applied as set forth in this Section, the Department shall subsequently monitor the water body to determine whether application of such pollution controls were successful in restoring the water body to full support status.~~ (3-20-97)

02. **Water Bodies ~~Not Fully Supporting Beneficial Uses~~ Needing Development of a Total Maximum Daily Load (TMDL).** (6-4-14)T

a. ~~After following the process identified in Subsection 055.01, The Department shall develop TMDLs or other equivalent processes, as required under Section 303(d)(1) of the Clean Water Act, for those water bodies identified in the Integrated Report as not fully supporting designated or existing beneficial uses and not meeting applicable water quality standards despite the application of required pollution controls shall be identified by the Department as water quality limited water bodies, and shall require the development of TMDLs or other equivalent processes, as described under Section 303(d)(1) of the Clean Water Act. A list of water quality limited water bodies shall be published periodically by the Department in accordance with Section 303(d) of the Clean Water Act and be subject to public review prior to submission to EPA for approval.~~ (6-4-14)T

b. Informational TMDLs may be developed for water bodies fully supporting beneficial uses as described under Section 303(d)(3) of the Clean Water Act, however, they will not be subject to the provisions of this Section. (3-18-11)

c. **TMDLs do not need to be developed for water bodies where other pollutant control requirements are expected to achieve full support of uses and compliance with water quality standards in a reasonable period of time. Such water bodies shall be identified as Category 4(b) waters in the Integrated Report.** (6-4-14)T

03. **Priority of TMDL Development.** The priority of TMDL development for water quality limited water bodies identified in ~~Subsection 055.02~~ **the Integrated Report** shall be determined by the Director ~~in consultation with the Basin Advisory Groups as described in Sections 39-3601, et seq., Idaho Code,~~ depending upon the severity of pollution and the uses of the water body, including those of unique ecological significance. **In determining the severity of pollution and the effect on uses, the Director shall apply the factors set forth in Section 39-3609, Idaho**

Code. Water bodies identified as a high priority through this process will be the first to be targeted for development of a TMDL or equivalent process. ~~(3-18-11)~~(6-4-14)T

04. ~~High Priority Provisions.~~ ~~Until a TMDL or equivalent process is completed for a high priority water quality limited water body, new or increased discharge of pollutants which have caused the water quality limited listing may be allowed if interim changes, such as pollutant trading, or some other approach for the pollutant(s) of concern are implemented and the total load remains constant or decreases within the watershed. Interim changes shall maximize the use of cost effective measures to cap or decrease controllable human caused discharges from point and nonpoint sources. Once the TMDL or equivalent process is completed, any new or increased discharge of causative pollutants will be allowed only if consistent with the approved TMDL.~~ **Protection of Uses Prior to Completion of TMDLs.** Prior to the completion of a TMDL or equivalent process for water quality limited water bodies, the Department shall take those actions required by the antidegradation policy (Section 051), the antidegradation implementation procedures (Section 052), and the provisions in Section 39-3610, Idaho Code. Nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis. ~~(3-20-97)~~(6-4-14)T

05. ~~Medium and Low Priority Provisions.~~ ~~Until TMDLs or equivalent processes are developed for water quality limited water bodies identified as medium or low priority, the Department shall require interim changes in permitted discharges from point sources and best management practices for nonpoint sources deemed necessary to prohibit further impairment of the designated or existing beneficial uses.~~ **Consistency with TMDLs.** Once a TMDL or equivalent process is completed, discharges of causative pollutants shall be consistent with the allocations in the TMDL. Nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis. ~~(3-20-97)~~(6-4-14)T

~~**a.** In determining the necessity for interim changes to existing activities and limitations upon proposed activities, the Department, in consultation with basin and watershed advisory groups, shall evaluate the water quality impacts caused by past regulated and unregulated activities in the affected watershed. (3-20-97)~~

~~**b.** Consideration of interim changes shall maximize the use of cost effective and timely measures to ensure no further impairment of designated or existing uses. (3-20-97)~~

06. Pollutant Trading. Development of TMDLs or equivalent processes or interim changes under these rules may include pollutant trading with the goal of restoring water quality limited water bodies to compliance with water quality standards. (3-20-97)

07. Idaho Agriculture Pollution Abatement Plan. Use of best management practices by agricultural activities is strongly encouraged in high, medium and low priority watersheds. The Idaho Agriculture Pollution Abatement Plan is the source for best management practices for the control of nonpoint sources of pollution for agriculture. (3-20-97)